

**REMARKS**

Claims 1, 3-13 and 15 are pending. By this Amendment, claims 1, 7 and 15 are amended. The courtesies extended to Applicant's representative by Examiner Ghyka at the interview held October 26, 2005, are appreciated. The reasons presented at the interview as warranting favorable action are incorporated into the remarks below and constitute the record of the interview.

**I. Provisional Obviousness-Type Double Patenting Rejection**

The Office Action rejects claims 1, 3-13 and 15 under the judicially created doctrine of obviousness-type double patenting over claims 1-21 of copending Application No. 10/690,270. Applicants acknowledge that the rejection is provisional. Accordingly, Applicants will address the provisional obviousness-type double patenting when the provisional rejection is the only rejection pending in the application.

**II. The Claims Define Patentable Subject Matter**

The Office Action rejects claims 1, 3-13 and 15 under 35 U.S.C. §102(e) over Song (U.S. Patent No. 6,781,651). The rejection is respectfully traversed. Song does not disclose or suggest a dielectric film including a nitride film arranged between the first electrode and the second electrode such that the first electrode is at a bottom surface of the nitride film and the second electrode is at a top surface of the nitride film, as recited in independent claim 1, and similarly recited in independent claims 7 and 15. The Office Action refers to Figs. 1 and 2 and corresponding passages to assert that Song discloses the nitride film having an aperture formed vertically above the semiconductor layer in plan view. However, Song does not disclose or suggest the above noted features of claims 1, 7 and 15 because, as shown in Fig. 2, Song's nitride film (which is reference numerals 92 and 94) is disposed on a substrate 10.

Therefore, independent claims 1, 7 and 15 define patentable subject matter.

Claims 3-6 and 8-13 depend on the respective independent claims, and therefore also define patentable subject matter as well as for the other features they recite. Accordingly, withdrawal of the rejection under 35 U.S.C. §102(e) is respectfully requested.

**III. Conclusion**

In view of the foregoing, it is respectfully submitted that this application is in condition for allowance. Favorable reconsideration and prompt allowance of claims 1, 3-13 and 15 are earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number set forth below.

Respectfully submitted,

  
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